MONTANA LEGISLATIVE HISTORY

Chapter 588 19 95

Bill H 448 S _____ Original bill & history ___C

H. Committee on Highways & Transportation			S. Committee on Highways & Transportation		
Hearing Date(s)	Feb 13	✓C	Hearing Date(s)	Mar 09	✓C
	_____	___C		Mar 14	✓C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Feb 14	✓C		Mar 15	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HB 447 INTRODUCED BY MENAHAN, ET AL.

APPROPRIATE MONEY TO DEPARTMENT OF FAMILY SERVICES FOR OLDER MONTANANS AS PROVIDED UNDER THE MONTANA OLDER AMERICANS ACT

2/06	INTRODUCED		
2/06	FIRST READING		
2/06	REFERRED TO APPROPRIATIONS		
3/09	HEARING		
3/21	TABLED IN COMMITTEE		
3/24	MISSED TRANSMITTAL DEADLINE FOR 67TH DAY DIED IN COMMITTEE		

HB 448 INTRODUCED BY SOMERVILLE, ET AL.

CLARIFY LEGAL RESPONSIBILITY OF RAILROADS TO KEEP RIGHT-OF-WAYS FREE OF FIRE HAZARDS

2/06	INTRODUCED		
2/06	FIRST READING		
2/06	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/13	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	91	6
2/18	3RD READING PASSED	91	7
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/09	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED	49	0
3/25	3RD READING CONCURRED	47	1
	RETURNED TO HOUSE		
4/11	SIGNED BY SPEAKER		
4/12	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
5/03	SIGNED BY GOVERNOR CHAPTER NUMBER 588 EFFECTIVE DATE: 10/01/95		

HB 449 INTRODUCED BY SWANSON

ALLOW STATE AUDITOR TO COLLECT DELINQUENT PERSONAL PROPERTY TAXES USUALLY COLLECTED BY THE COUNTY TREASURER WHEN REQUESTED TO DO SO

BY REQUEST OF THE OFFICE OF BUDGET AND PROGRAM PLANNING AND THE STATE AUDITOR

2/06	INTRODUCED		
2/06	FIRST READING		
2/06	REFERRED TO TAXATION		
2/07	FISCAL NOTE REQUESTED		
2/13	FISCAL NOTE RECEIVED		
2/13	FISCAL NOTE PRINTED		
2/14	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED AS AMENDED	56	40
2/20	3RD READING PASSED	73	26
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO TAXATION		
3/14	HEARING		

HEARING ON HB 448

Opening Statement by Sponsor:

REP. ROGER SOMERVILLE, Kalispell, introduced HB 448. He said this bill would clarify the legal responsibilities of railroad right-of-ways, specifically maintenance of right-of-ways and the removal of all fire hazards. He explained that in the past if a fire started on property adjacent to the railroad right-of-way, through no fault of the railroad and burnt down the railroad right-of-way, then the railroad was required to pay for damages from that fire. He said the bill clarifies the railroads responsibility to clean up their right-of-ways and not the adjacent owners.

Proponents' Testimony:

Russ Ritter, Director of Montana Rail Link Public Relations, testified in favor of the bill. He presented two amendments. **EXHIBITS 1 and 2** He said the bill updates the law regarding fire responsibility both within the railroad right-of-way as well as outside the right-of-way. He emphasized that the bill does not eliminate the railroad's responsibility for any fire that is initiated as a result of a train or a maintenance-of-way crew on the right-of-way for any property adjacent to the right-of-way. If a fire is started outside the right-of-way which Rail Link is responsible for they accept that. However, if a fire starts outside their property not as a result of railroad activity, then the perpetrator of that activity would become the responsible party. The present law makes it arbitrary.

The amendment offered by **Mr. Bloomquist** of the Montana Fire Districts Association would better describe the right-of-way (see Exhibit 1). This would include track maintenance. The other suggested change (see Exhibit 2) is needed because the right-of-way may only be ten feet so the word "reasonable" is necessary.

Dave Ditzel, Locomotive Engineers, testified in support of the bill. He discussed procedures that workers follow when a fire does break out.

Pat Kiem, Burlington Northern, supported the bill.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, spoke in opposition to the bill on the basis that it subjects owners of agricultural land to more liability of fires caused by trains. He called attention to several provisions in the bill. First, the bill deletes the term "dangerous" and only applied to combustible materials or conditions (line 14). So that makes the railroad no longer responsible for dangerous conditions which may be different than combustible.

The bill replaces the clear responsibility of the railroad to maintain a right-of-way one hundred feet on either side of the track with a vague definition of reasonable distance. He pointed out that there is no doubt that current law favors owners of agricultural land when there is a dispute of damages for fire. This bill would take away their current advantage.

He pointed out on lines 17-20 of the bill which does away the sentence that makes maintenance of railroad land prema-facia evidence of negligence. The railroad is still liable for fires caused by the railroad, but the disputes often center on what caused the fire and who was responsible. "Prema-facia evidence" is basically the term that says the burden is on the railroad to prove that its negligence did not start this fire. The bill would remove that burden on the railroad.

Maureen Cleary Schwinden, Women Involved in Farm Economics, spoke in opposition to the bill. She said she had the same concerns as **Russell Hill** regarding the elimination of language in the bill. She mentioned that this bill was not merely a way to clean up the law, especially if small farmers were forced to carry on litigation with the railroads in terms of proving their innocence or guilt in these situations.

Questions From Committee Members and Responses:

REP. PAT GALVIN asked **Mr. Ritter** about spark arresters or sticky breaks. **Mr. Ritter** replied that whatever caused a fire was accepted by the railroad as their responsibility. He explained that the equipment now is far superior to the equipment available when the law was first written. He pointed out that the railroad had spent over $390,000 last year alone on its trackage to maintain its right-of-ways.

REP. GALVIN asked for an explanation of track arresters and sticky breaks. **Mr. Ditzel** replied that spark arresters were devices placed on the locomotive that controls or restricts the stack emissions. Sticky breaks can also cause a spark. Locomotives have been retrofitted with these devices universally. He noted that a lot of smoke from the stack means an inefficient use of fuel which is one of the biggest costs to the railroad which is attended to at the roundhouse. He discussed the sticky breaks which result from repeated application of the air breaks. He said the new air breaks installed are designed to reduce or eliminate this problem. The railroads have done a lot to reduce or eliminate things that cause fires since they would have to pay for it.

REP. DAN MCGEE asked about the language on line 12 and why the railroad wanted to qualify the reasonable distance. **Mr. Ritter** replied that the biggest problem with the language is that there were many places where they did not have one hundred feet so a reasonable distance would better cover what the right-of-way is, rather than giving it a blanket one hundred feet. However, he

said the railroad would not have a problem with the bill if the words "reasonable distance" were stuck from the bill and be "within the right-of-way".

REP. MCGEE asked how the railroad can keep the right-of-ways free from dead grass, weeds and combustible materials. **Mr. Ritter** said that the railroad spends over a half of million dollars a year by cleaning the debris as much as any landowner.. **REP. MCGEE** asked whether they burned the weeds. **Mr. Ritter** said they did and if fires started as a result it was the railroad's responsibility.

REP. MCGEE asked about the deletion of language in lines 17-20 where prima-facia evidence is not wanted. **Mr. Ritter** replied that they feel the responsibility of the fire should be with the individual that started it, whether it is the railroad or someplace else. However, he pointed out that the way the law has been written, it is so tilted in the past that no matter where a fire starts if it ends up on the right-of-way then the railroad not only pays for the right-of-way, but for the landowner's land as well. He pointed out an example near Wilsall where trains have not run for over three years and two years ago there was a large fire that the railroad eventually paid for simply because it happened on the right-of-way. He emphasized that if something happens and goes over into someone else's land then it is the responsibility of the railroad if they caused it.

REP. BARNETT asked about the responsibility that would occur should a rancher start a fire that ended up burning debris on railroad right-of-way on an abandoned track. **Mr. Ritter** replied that just because a track is abandoned does not mean it is forgotten and that the railroad does keep working at clearing brush even on those sections.

{Tape: 1; Side: A; Approx. Counter: 808; Comments: None.}

REP. JOE TROPILA asked about the present language "dangerous". **Mr. Ritter** said that normal materials that grow around the track or fenceline are not particularly dangerous unless allowed to accumulate and dry out in the summer heat when they can become a fire hazard. "Combustible material" fits the language better than "dangerous" but the language is not a serious problem.

REP. TROPILA asked about the approximate width of the right-of-way. **Mr. Ritter** replied that it varies all along the track. Some is narrow like 12-15 feet and in other places 45-50 feet. **REP. TROPILA** asked about other land owned outside the right-of-way. **Mr. Ritter** replied that they did, but that most of the land was in cities not adjacent to the track.

REP. LINDA MCCULLOCH asked about the language on line 14, the word "dangerous".

{Tape: 1; Side: B; Approx. Counter: 0; Comments: None.}

She asked the committee if the railroad was so willing to take the responsibility for the right-of-ways in fire situations then why should lines 17-20 be eliminated. **Mr. Hill** responded that the word "dangerous" could entail hazardous materials. He pointed out that dangerous could be something that could block firefighters' progress. In lines 14-16, in terms of the liability of the railroad, the railroad currently is responsible for maintaining a distance of 100 feet off to the sides of the track. If it doesn't maintain that then the railroad is liable for a fire emanating from the train. Under the bill the area is shrunk down to the area so the railroad is no longer responsible for maintaining this area. If the fire starts in this area, it is not clear at all that the railroad is liable.

CHAIRMAN ANDERSON asked **Mr. Hill** about a fire starting in one place then getting in a railroad right-of-way, would the railroad be responsible for not keeping that right-of-way clear of dead grass. **Mr. Hill** replied that he thought the railroad was responsible to maintain some narrowed down corridor along the track.

REP. GALVIN asked what if the railroad does not own that one hundred feet. **Mr. Hill** replied that the present statute required them to keep it cleared one hundred feet. However, he pointed out, that he was not familiar with the case law and did not know how they could be required to keep clear private property that they don't own.

REP. MCGEE asked about the right-of-ways that are established legally on the plans of the railroad. He asked if there were not places on the plans that go 200 feet on either side and down to 30 feet in smaller sections. Sections may or not be on the two hundred foot line but that the legal right-of-way was defined on those plans. **Mr. Hill** replied that was correct. **REP. MCGEE** said if the language on line 12 were to drop the reasonable distance and say "within its right-of-way" would that meet the legal requirement. **Mr. Hill** said that it would and the railroads need to clarify this, but that right-of-way is legal control of the property.

Closing by Sponsor:

REP. SOMERVILLE closed on the bill. He discussed the proposed amendments. He said on the amendment to add track maintenance, the committee should look at the justification since most fires are caused by maintenance such as grinding, welding, or cutting and other track maintenance. He pointed out that right now the railroad is required to maintain property that they do not own.

and listen to the concerns of all the shippers and weigh those according to how good their arguments are and what their needs for services are. He pointed out that he could not arbitrarily say a percentage would do the job.

{Tape: 3; Side: A; Approx. Counter: 0; Comments: None.}

REP. SCHWINDEN said there should be a system where any shipper that objects could be heard.

REP. MCGEE pointed out the percentage in the bill needed to be consistent.

Motion/Vote: **REP. MARSHALL MOVED TO TABLE THE HB 364. A roll call vote to table the bill was taken. The motion failed 9-9.**

Discussion:

The Brainard Amendment was discussed which would change the percentage from 50% to 30%.

CHAIRMAN ANDERSON spoke against the amendment. He said if the railroad wanted to close these agencies they had done some research to determine whether they would be losing business. This would hamper the market-based system telling them they would have to jump through these hoops if they want to close the agencies. If they close the agencies and it upsets the shippers that use them, then they will adjust that.

Vote: The question was called on the Brainard amendment. **The motion failed 11 to 7 with REPS. BRAINARD, TROPILA, LARSON, RYAN, MCCULLOCH, DEVANEY and MCGEE voting yes.**

Vote: The question was called on the motion that HB 364 do pass as unamended. **A roll call vote was taken. The motion carried 10-8 with REPS. RYAN, LARSON, GALVIN, DEVANEY, MARSHALL, MCCULLOCH and TROPILA voting no. REPS. SCHWINDEN voted no by proxy.**

EXECUTIVE ACTION ON HB 448

Motion: **REP. CLARK MOVED THAT HB 448 DO PASS.**

Motion: **REP. HANSON** moved to amend the bill, inserting the words "track maintenance".

Discussion:

REP. MCGEE said rather than putting in trains and track maintenance to go back to the original language which includes all operations.

REP. LARSON said he recommended adding back track and maintenance since most fires that develop along right-of-ways today are the

result of maintenance activities which are not the same as the operation of the train itself. He said for this reason he was in favor of the Hanson amendment.

REP. MCGEE replied that a clever attorney could find a way to get out of this situation, if they were not operating a train for maintaining a railroad track, that's why all things fall under the heading of operating the railroad. He said the original language was broad enough to be all-inclusive.

CHAIRMAN ANDERSON pointed out that this would clarify it. For example, if a track that did not have the dry grass cleared from it was struck by lightning, then this language would clarify whether the railroad was indeed operating or not.

{Tape: 3; Side: A; Approx. Counter: 495; Comments: None.}

REP. HANSON pointed out the problem of abandoned track and said the language would take care of that.

REP. MCGEE suggested the language say, "trains, track maintenance or other railroad operations".

Motion/Vote: **REP. MCGEE MOVED THE SUBSTITUTE AMENDMENT.** The question was called. **The motion carried unanimously.**

Motion: **REP. MCGEE** moved to amend the bill on line 12, to strike the words "or a reasonable distance of 100 fee on each side of the track or road bed" on line 13 and insert after the words "of the track", "within its right-of-way".

Discussion: **REP. MCGEE** explained that he did a lot of legal boundary work along railroad right-of-ways. A right-of-way is a very specific thing and is not arbitrary and not necessary to a fence. It is established legally. The responsibility of the railroad is to what it owns, which is a legal boundary. Their responsibility is the right-of-way. To say 100 feet or any dimension is limiting and will not address every situation. To say "right-of-way" establishes exactly what their limits are.

REP. SOMERVILLE commented that the right-of-way may be far beyond what is reasonable for the railroad to keep the dead grass out of the area.

REP. BRAINARD pointed out that one of the reasons for the language being 100 feet is for the maintenance crew who do not run the lines and the boundaries can be indistinguishable, however a hundred foot tape is a practical definition. A "reasonable" distance is not always defined the same way.

REP. HANSON said this raises a question if the railroad right-of-way is out a quarter of a mile would they be expected to take care of all the dead weeds and grass, this could then become

{Tape: 4; Side: A; Approx. Counter: 0; Comments: None.}

REP. MCGEE said he felt the railroad was responsible for their land and their right-of-way, as defined by their railroad plan. He said the bill would establish the railroad doesn't have liability if the fire, in fact, starts on someone else's property. It also establishes the limit of the liability. They are responsible for what lies in the right-of-way. They may choose to let something go which could create a situation that starts a fire.

REP. ANDERSON pointed out the only problem he could see is requiring the railroad to remove the dead grass. Ranchers are not required to remove their dead grass.

REP. DEVANEY pointed out the 100 foot tape is not a good thing since it would infringe on ranchers' hay ground, the fair grounds or wherever.

REP. LARSON spoke against the amendment. He said it seemed like the amendment was trying to clarify that they have a legal responsibility to keep a certain area free of grass but does not exonerate them from legal liability on the rest of their property. The physical difficulty of maintaining the entire right-of-way, where it may be a quarter of mile or 200 feet from the railroad center line, is quite burdensome when considering a couple thousand miles of track.

REP. BRAINARD pointed out that he had put out forty of these fires along the Milwaukee Railroad line because they did not maintain their right-of-way that year. This amendment would address the control of a fire hazard and removing dead grass. A practical distance is needed for effective fire control in removing the hazard. In some cases there is adjacent private property where there is no hazard, but there is a point of diminishing returns about how much grass would be removed and how far away from the tracks it will be. The point that was made was with the newer technology today with brakes and spark arresters that the old distances may not be as applicable as they used to be. He said he's seen trains rounding a corner at night and watched a shower of sparks. He noted that there is a reason the 100 feet is in the language. Sparks can go out of a stack and go up 300 feet in the air and start a fire on a hill, and the railroad would still be held liable for that.

CHAIRMAN ANDERSON pointed out that the language "reasonable" would suffice just because there are so many changing conditions, such as fall and summer. If the railroad starts a fire they would be liable.

The question was called on the amendment to strike on line 12 where it says "for a reasonable distance" and goes through the word "roadbed" on line 13 and insert "within its right-of-way".

{Tape: 4; Side: A; Approx. Counter: 200; Comments: None.}

Vote: A roll call vote was taken on the McGee amendment. **The motion failed 11-7.**

Motion: **REP. SOMERVILLE** proposed an amendment. After the word "distance" on line 12, strike out "of 100 feet on each" and go down to line 13, "side of the track or roadbed" and strike that. So it would read "a railroad corporation or rail company operating a railroad within this state shall keep its railroad track on either side of the track for a reasonable distance within its right-of-way free of dead grass, weeds or any combustible material".

{Tape: 4; Side: A; Approx. Counter: 256; Comments: None.}

Vote: **The motion carried on the Somerville amendment with REPS. MCCULLOCH, BARNETT, LARSON and SCHWINDEN voting no.**

CHAIRMAN ANDERSON moved to amend the language by putting in again the word "dangerous or" on line 14.

The question was called.

Vote: **The motion on the Anderson amendment carried 16 - 2 with REPS. CLARK and JORE voting no.**

Motion: **REP. LARSON MOVED HB 448 DO PASS AS AMENDED.** The question was called. **The motion passed 17-1 with REP. SCHWINDEN voting no.**

EXECUTIVE ACTION ON HB 133

Motion: **REP. CLARK MOVED THAT HB 133 DO PASS.**

Discussion:

REP. LARSON pointed out the risk was the same no matter which vehicle he was operating. He said the bill may have the effect of revolutionizing the industry and probably drive half the insurance out of the state so it was not practical.

REP. MCGEE said he would probably vote against the bill since he had more drivers than he had vehicles. He said he would like to see this as an operational option for insurance carriers but the way the bill is drafted it does not give them an option but basically reverses the procedures in place now.

Motion: **REP. JORE MADE A SUBSTITUTE MOTION TO TABLE HB 133.**

Vote: **The motion carried 10-8 with REPS. ANDERSON, MCCULLOCH, BRAINARD, TROPILA, RYAN, CLARK, HANSON and LARSON voting no.**

HOUSE OF REPRESENTATIVES

Highways

ROLL CALL DATE 02-13-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Shiell Anderson, Chairman	✓		
Rep. Rick Jore, Vice Chairman, Majority	✓		
Rep. Pat Galvin, Vice Chairman, Minority	✓		
Rep. Joe Barnett	✓		
Rep. Matt Brainard	✓		
Rep. Bob Clark	✓		
Rep. Charles Devaney	✓		
Rep. Marian Hanson	✓		
Rep. Don Larson	✓		
Rep. Rod Marshall	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Jeanette McKee	Came in later 4:20pm ✓		
Rep. Bill Ryan	✓		
Rep. Dore Schwinden	✓		Excused
Rep. Roger Somerville	✓		
Rep. Joe Tropila	✓		
Rep. Jack Wells	✓		

HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Mr. Speaker: We, the committee on **Highways and Transportation** report that **House Bill 448** (first reading copy -- white) **do pass as amended.**

Signed: *Shiell Anderson, Chair*

And, that such amendments read:

1. Page 1, line 12.
Following: "~~feet~~"
Insert: "within its right-of-way"

2. Page 1, lines 12 and 13.
Strike: "on" on line 12 through "roadbed" on line 13

3. Page 1, line 13.
Strike: "in this state"

4. Page 1, line 14.
Following: first "~~er~~"
Insert: "dangerous or"

5. Page 1, line 17.
Following: "trains"
Insert: ", track maintenance, or other railroad operations"

-END-

Committee Vote:
Yes 17, No 1.

381320SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Highways

DATE 2-13-95 BILL NO. HB 448 NUMBER 7-11

MOTION: Amend HB 448 Rep. McGEE

NAME	AYE	NO
Rep. Shiell Anderson, Chairman		✓
Rep. Rick Jore, Vice Chairman, Majority		✓
Rep. Pat Galvin, Vice Chairman, Minority	✓	
Rep. Joe Barnett		✓
Rep. Matt Brainard		✓
Rep. Bob Clark		✓
Rep. Charles Devaney		✓
Rep. Marian Hanson		✓
Rep. Don Larson		✓
Rep. Rod Marshall	✓	
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Jeanette McKee		✓
Rep. Bill Ryan	✓	
Rep. Dore Schwinden	✓	
Rep. Roger Somerville	✓	
Rep. Joe Tropila	✓	
Rep. Jack Wells		✓

EXHIBIT 1
DATE 2/13/95
HB 448

AMENDMENT TO HB448

Section 1. Section 69-14-721 is amended to read:

LINE 17; after the word <u>trains ,</u> add the words, <u>and track maintenance.</u>

Justification; In the operation of modern diesel engines on railroads, very few fires are attributed to these engines, not as in the days of the old steam engines. Most fires along the railroad tracks are caused by maintaining the tracks: such as grinding, cutting, welding, and other track maintenance.

This amendment is offered by the Montana Fire Districts Association.

EXHIBIT 2
DATE 2/13/95
HB 448

Amendment to House Bill 448

Introduced by Representative Somerville

Section 1, line 12:

After the words reasonable distance insert within it's right of way.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Highways & Trans. COMMITTEE BILL NO. HB456, 24

DATE 2-13-95 SPONSOR(S) Rep. Ream, Rep. Marshall, Rep. Sem

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
D.B. Ditzel	Bro. of Locomotive Engrs	HB448 ✓	
James A Lofftos	MT Fire Dist Assn	HB448 ✓	
Jim Wysocki	City of Bozeman	Amended HB 249	
Maureen Cleary-Schneider	WIFE	HB 448	X
Pat Keim	BNRR	HB448 ?	
Steve Turkewitz	Mt. Auto Dealers	~~HB448~~	456 X
Dean Roberts	DOJ		456 X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By CHAIRMAN LARRY TVEIT, on March 9, 1995, at 3:10 p.m. in room 410.

ROLL CALL

Members Present:
Sen. Larry J. Tveit, Chairman (R)
Sen. Charles "Chuck" Swysgood, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Arnie A. Mohl (R)
Sen. Greg Jergeson (D)
Sen. Linda J. Nelson (D)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Carla Turk, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HJR 13
HB 364
HB 448

Executive Action: None

HEARING ON HB 448

Opening Statement by Sponsor:

REPRESENTATIVE ROGER SOMERVILLE, HD 78, Kalispell, said HB 448 clarified the legal responsibility of railroads in Montana, on their right-of-way. He said he wanted to specify; the railroad's right-of-way responsibilities in Montana. He said the legal language was important in the current law and they wanted to change the law to clarify the language for all parties involved.

He attested the specific intent was to require the railroads to maintain their right-of-ways and to remove all fire hazards. He said that with current law a fire which started on land adjacent to the railroad right-of-ways, through no fault of the railroad, and burned onto the railroad right-of-way could have required the railroad to pay the entire fire damage costs. He said the language had been cleaned up in Section 1 and now specified that railroads were responsible for their right-of-way areas, but not the areas of the adjacent landowners. He said that with the new language, if a fire started on land adjacent to the railroad right-of-way, through no fault of the railroad, and burned across the right-of-way the railroad would no longer be automatically held responsible. He maintained that if the railroad was at fault for a fire started either on or off the railroad right-of-way, the railroad would pay the damages. **REPRESENTATIVE SOMERVILLE** stated the House Highways & Transportation Committee had amended the Bill and requested the right to close.

Proponents' Testimony:

Russ Ritter, Governmental Affairs Director for Montana Rail Link, said they had requested the Bill be drafted. He reiterated the sponsor's statement that the Bill simply updated current law regarding who had the responsibility of a fire, both within the right-of-way as well as outside the right-of-way. He emphasized that the proposed change would not eliminate the railroad's responsibility for any fire initiated as a result of a train or a maintenance-of-way crew on the right-of-way or any property adjacent to the right-of-way. He termed that a key point, as it still held the railroads responsible for any fire they started. He said that if a fire was started by an individual off of the right-of-way, and it spread to the right-of-way, then it would become the individuals responsibility to pay the damages.

Mr. Ritter He said they had reviewed the amendments made by the House Committee and stated they thought the changes were reasonable. He reported his company was not trying to get away from any responsibility. He further contended the equipment and technology the railroad had today was capable of identifying when and where a fire was started, and attested that if a fire was started they still would take responsibility for extinguishing that fire and for the adjacent property damages.

James Lofftus, President, Montana Fire District Association, said they were in favor of HB 448, providing that if the railroad caused the fire they would pay the damages.

Opponents' Testimony:

Russell Hill, representing the Montana Trial Lawyers Association, said opposed HB 448 even though it leveled the playing field which was in favor of agricultural interests. He said the

language struck began on line 19. He stated that under current law a fire which burned private or railroad property along the railroad was considered prima facie evidence that the railroad was at fault and meant that the railroad had to show the fire was not their fault. He reported HB 448 would remove the burden of the railroads having to disprove that fault. He stated the House Committee amendments were good, but "dangerous" had not been inserted on line twenty-three as "dangerous" had been added to "combustible material" on line 15. He said that as a result of the exclusion on line twenty-three a railroad corporation or company may be required to keep that area free of "dangerous" materials. He termed the omission a possible technical problem.

Wade Cykorski, a Fallon County Rancher, said he opposed the Bill because he thought it would place an unfair burden on farmers and ranchers. He maintained that railroads started a lot of fires and expressed the feeling that it was safe to assume a railroad was responsible when a fire started along a railroad line. He said the felt current law was fairer to farmers and ranchers. He expressed the feeling that the railroads were trying to shirk their responsibility for fires, by placing the burden on proof on farmers and ranchers.

Questions From Committee Members and Responses:

SENATOR RIC HOLDEN asked **Russ Ritter** to respond to **Mr. Cykorski's** statement. **Mr. Ritter** said he had hoped he had made that point clear, that the responsibility would be obvious that when a train passed through and a fire started, it would be proved the railroad started the fire even if no one saw it happen. He said the railroads were trying to get the portion of law changed which pertained to a fire which originated some place else and came onto the railroad right-of-way.

SENATOR HOLDEN asked if current law wasn't already the way he described it? **Mr. Ritter** said that was not currently correct. He said that under current law the railroad was responsible for paying damages, no matter where the fire started, if it came onto their property.

SENATOR LINDA NELSON asked the width of the railroad right-of-way? **Mr. Ritter** said that varied, as their railroad had areas where the right-of-way was 600 feet wide and some were as narrow as 25 feet on each side.

SENATOR NELSON asked what an average width would be? **Mr. Ritter** said it would probably be in the area of 100 + - feet on each side.

SENATOR BARRY "SPOOK" STANG asked if it was possible to tell the point of origin for every fire started? **Mr. Hill** said he knew professionals had good means of investigation, but he also knew that in the context of litigation it was very difficult to prove.

SENATOR STANG asked how far train sparks usually flew? **Mr. Ritter** said he thought that depended on weather conditions and the combustibility factor associated with higher temperatures as well as wind factors.

SENATOR STANG asked if it would be possible for a train to pass through an area, start a fire off of the railroad right-of-way, and then have the fire return to the right-of-way? He asked how it would be proved the train, not some one else, started that fire? **Mr. Ritter** said he thought **SENATOR STANG'S** description would be obvious and did not feel that was the point being argued. He said he thought they were trying to identify and change the fact that it became difficult to prove when it was not the train's fault.

SENATOR STANG asked if the state fire bureaus had investigated fires originating along the railroad track, when the point of origin had been in question? **Mr. Ritter** said he could only answer for the Missoula University area where there had been a number of fires started when no trains had been in the locale for as many as fourteen hours, and under current law it was still their responsibility.

SENATOR STANG said he knew it was possible, in a forested area, for a spark to smolder for two or three days before a fire started. He asked if that wouldn't make it possible for a fire to have a delayed start from a train spark? **Mr. Ritter** said he thought it would be possible in the Senator's description, but didn't think that was the total case.

SENATOR MACK COLE asked if the Bill was talking about keeping the right-of-way clean of combustibles, and how was it defined? **Mr. Ritter** answered that the railroad's responsibility was to keep the right-of-way reasonably clean of debris which would cause these types of things. He said it was for their own good, as well as the neighbor's, because the railroads knew they would probably start more fires than the adjacent property owners would. He said they had concerns because last year, along their 970 + miles of track, their company spent $566,000 in keeping their right-of-way clean.

SENATOR MACK COLE asked whose responsibility the fire was on leased land? **Mr. Ritter** said he thought that if the railroad was responsible for the fire, it was the railroad's responsibility, even if it was on the leased land. He stated that if the fire was started by the individual leasing the land, then the damages would be the individual's responsibility.

SENATOR LINDA NELSON asked if this matter had been a big problem, so as to prompt proposal of the Bill? **Mr. Ritter** said it had not been a large problem, except that the railroad had encountered a number of cases where their railroad company had paid some large damages which they felt their company had nothing to do with.

CHAIRMAN TVEIT asked what was meant by "reasonable" on line 13, as opposed to the current "100 feet"? **Mr. Ritter** said that sometimes it could be less than the 100 feet, if there appeared to be a natural boundary such as a river, even if the railroad owned some right-of-way on the other side of the river.

CHAIRMAN TVEIT asked how the railroad was going to regulate the "reasonable" distance language, especially in the fall season when they had an entire right-of-way which was combustible dried material? **Mr. Ritter** said that any time a fire started on railroad property, within any right-of-way, it would still be the railroad's responsibility. He stated they were only trying to identify outside the right-of-way, where the fire started.

CHAIRMAN TVEIT asked how current law made the railroad responsible for a fire which started on adjacent property? **Mr. Ritter** said that if the fire started on adjacent property and came onto the right-of-way, then the railroad felt it should be the responsibility of those who started the fire.

CHAIRMAN TVEIT asked if the railroads didn't prove someone else's guilt in those cases? **Mr. Ritter** said they would like to think that would happen, but it was very hard to prove with the law in its current form.

CHAIRMAN TVEIT asked if the Bill would turn the burden of proof around by 180°? **Mr. Ritter** said that they were only trying to make the railroads responsible for what they did and not necessarily responsible for what they did not do.

Closing by Sponsor:

REPRESENTATIVE SOMERVILLE said House discussion had revealed that if 100 feet remained in the law, it could require the railroad to keep private property clean in some areas. He said that was why "reasonable" appeared in the language. He said that modern railroad equipment helped reduce the number of fires that railroads presently started. He stated that spark arresters were put on equipment, and today most railroad caused fires were started by maintenance crews doing track work.

HEARING ON HJR 13

Opening Statement by Sponsor:

REPRESENTATIVE TONI HAGENER, HD 90, Havre, said HJR 13 was intended to bring the importance of uninterrupted Amtrak service to Montana and its citizens to the attention of Montanans and their Congressional Delegation. She said the resolution wasn't asking for money, but asked for concern for jobs, support for jobs, for the economy and for a public transportation facility

MONTANA SENATE
1995 LEGISLATURE
HIGHWAYS AND TRANSPORTATION COMMITTEE

ROLL CALL DATE 3/9/95

NAME	PRESENT	ABSENT	EXCUSED
MACK COLE	X		
RIC HOLDEN	X		
REINY JABS	X		
GREG JERGESON	X		
ARNIE MOHL	X		
LINDA NELSON	X		
BARRY "SPOOK" STANG	X		
CHUCK SWYSGOOD, VICE CHAIRMAN	X		
LARRY TVEIT, CHAIRMAN	X		

SEN:1995
wp.rollcall.man
CS-09

DATE 3/9/95

SENATE COMMITTEE ON Senate Highways

BILLS BEING HEARD TODAY: HJR 13 HB 364
HB 448

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Carol Allen	Central Montana Rail	364	✓	
Deborah Smith	Sierra Club	364		X
D. DITZEL	BRO of LOCOMOTIVE ENGINEERS	364		X
D. DITZEL	BRO of LOCOMOTIVE ENGINEERS	HJ 13	✓	
D DITZEL	BRO of Loco Engrs	HB448	✓	
JAMES A. LOFFTUS	MT FIRE DIST ASSN	HB 448	✓	
PAT KEIM	Burlington Northern	HB 364 HB 448	✓	
Pam Langley	Montana Grain Elevator Assn	HB364	✓	
Maureen Clancy-Schwindt	WIFE	HB364		X
Bob Rowe	PSC	HB 364		X
Rob Saindon	MDT	HJR 13	✓	
Vince Vandeberg	Mky. Aff	HB 364		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EXECUTIVE ACTION ON HB 448

Motion/Vote:

SENATOR COLE MOVED HB 448 BE CONCURRED IN AND THE MOTION CARRIED WITH SENATOR TVEIT VOTING NO.

SENATOR STANG WAS ASSIGNED TO CARRY THE BILL ON THE SENATE FLOOR.

EXECUTIVE ACTION ON HB 248

Discussion:

SENATOR JERGESON stated there had been some discussion of a conflict between HB 248, SB 390, SB 83, and SB 34, but Committee discussion had involved a Section where no conflict actually existed. He stated there was a conflict elsewhere and Department personnel was present to explain. **Brenda Nordlund, Department of Justice,** explained there was a minuscule conflict on page 5, Subsection (4) in 61-5-110 language, line 15-20, and that conflict coordinated with the same or similar language in SB 34, 61-5-110, on page 5, lines 13-16. She reported having worked with **Greg Petesch, Legislative Council,** to arrive at the best way to resolve the conflict. She explained that the conflict provision was the second amendment on amendment number hbo24801.avl, **(EXHIBIT # 6).** She stated that since HB 248 had to be returned to the House to address amendment #2, they were proposing the need to clarify that in 61-5-105, which was the eligibility for a drivers license Section, those individuals who have lost consciousness or control could not get a commercial driver's license unless also comporting with commercial driver's license regulations. She attested this was only a clarification.

Motion/Vote:

SENATOR JERGESON MOVED TO ADOPT AMENDMENT NUMBER hb024801.avl AND THE MOTION CARRIED.

Motion:

SENATOR JERGESON MOVED HB 248 BE CONCURRED IN AS AMENDED.

SENATE STANDING COMMITTEE REPORT

March 15, 1995

MR. PRESIDENT:

We, your committee on Highways and Transportation having had under consideration HB 448 (third reading copy -- blue), respectfully report that HB 448 be concurred in.

Signed: Sen. Tveit
Senator Larry Tveit, Chair

Amd. Coord.
Sec. of Senate

Senator Stang
Senator Carrying Bill

601244SC.SRF